

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MELECIO CARDONA,	)	No. CV 11-2417 SVW (CW)
	)	
Petitioner,	)	ORDER DISMISSING PETITION
	)	AS SUCCESSIVE
v.	)	
	)	
WARDEN,	)	
	)	
Respondent.	)	
_____	)	

The pro se Petitioner is a prisoner in state custody pursuant to a conviction in California Superior Court, Ventura County, CR 16929.<sup>1</sup> The present petition for writ of habeas corpus, filed March 22, 2011, challenges the conviction in that case. Petitioner has brought nine previous habeas petitions in this court challenging the same conviction: Cardona v. Warden, CV 11-1459 SVW (CW); Cardona v. Warden, CV 11-551 SVW (CW); Cardona v. Warden, CV 10-8970-GHK (CW); Cardona v.

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<sup>1</sup> As noted in the record in Petitioner's prior habeas actions, Petitioner Melecio M. Cardona (# C-49665) was originally convicted in 1982 in California Superior Court, Ventura County, Case No. CR 16929. In 1984, the California Court of Appeal reversed and remanded. On remand, petitioner pled nolo contendere to reduced charges and was sentenced to seventeen years to life in state prison.

1 Central District of California, No. CV 10-3339 SVW (CW); Cardona v.  
 2 Gomez, No. CV 97-579-WDK(CW); Cardona v. Unnamed Respondent, No. CV  
 3 07-5092-SVW (CW); Cardona v. Walker, No. EDCV 07-7070-SVW (CW);  
 4 Cardona v. Walker, No. CV 08-7307-SVW (CW); and Cardon v. Walker, No.  
 5 CV 09-1946-SVW (CW). Case No. CV 97-579 was denied and dismissed with  
 6 prejudice in a judgment entered on April 1, 2003. The other eight  
 7 prior petitions have all been dismissed as successive.

#### 8 DISCUSSION

9 A new habeas petition under 28 U.S.C. § 2254, which challenges  
 10 the same state court judgment addressed in one or more prior § 2254  
 11 petitions, is a second or successive petition. A federal district  
 12 court may not consider a second or successive petition unless the  
 13 petitioner has first obtained an order from the proper federal circuit  
 14 court of appeals authorizing the district court to review the new  
 15 petition. See 28 U.S.C. § 2244(b)(3)(A). The court of appeals may  
 16 only authorize review of a second or successive petition in the  
 17 district court if the petitioner "makes a prima facie showing [to the  
 18 court of appeals] that the application satisfies the requirements of"  
 19 28 U.S.C. § 2244(b). See 28 U.S.C. § 2244(b)(3)(C); Felker v. Turpin,  
 20 518 U.S. 651, 657, 116 S. Ct. 2333, 135 L. Ed. 2d 827 (1996).

21 The present petition is a second or successive petition under  
 22 § 2244(b)(3)(A) because it challenges the same state court judgment  
 23 challenged in a prior federal petition, and that prior petition was  
 24 dismissed with prejudice.<sup>2</sup> This court may not review a successive  
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26 <sup>2</sup> A new petition is not subject to dismissal under § 2244(b)(3)  
 27 (A) based on a prior petition which was dismissed without prejudice,  
 28 e.g., for failure to exhaust state remedies. In re Turner, 101 F.3d  
 1323, 1323 (9th Cir. 1997). Here, the present petition is successive  
 based on No. CV 05-4053 which was dismissed with prejudice.

1 petition unless the petitioner has first obtained the required order  
2 from the United States Court of Appeals for the Ninth Circuit. There  
3 is no indication in the record that this petitioner has obtained such  
4 an order. Therefore, the present petition is subject to dismissal  
5 without prejudice. Petitioner may file a new petition in this court  
6 if and only if he first obtains authorization from the Ninth Circuit  
7 pursuant to 28 U.S.C. § 2244(b)(3)(A).

8 **ORDERS:**

9 1. It is **ORDERED** that judgment be entered dismissing the  
10 petition as successive.

11 2. The clerk shall serve copies of this order and the judgment  
12 herein on the petitioner.

13  
14 DATED: April 13, 2011



15  
16 STEPHEN V. WILSON  
United States District Judge

17 Presented by:

18 Dated: March 25, 2011

19  
20 Carla M. Woehrle

21 CARLA M. WOHRLE  
United States Magistrate Judge